

Remarks

Claims 13-41 and 53-58 have been withdrawn from consideration. Claims 42-46 have been cancelled. Claims 1-12, 47-52, and 59 remain in the case under active consideration.

Claims 1-12, 47-52, and 59 have been rejected under 35 U.S.C. § 102(e) as anticipated by Rahdert et al. publication No. US 2004/0260393 A1 ("Rahdert"). This rejection is respectfully traversed.

Rahdert is not in fact prior art against any of applicants' claims 1-12, 47-52, and 59. Rahdert claims the following priority dates (listed in order of the earliest first):

Nov. 26, 2002

The filing date of
provisional applications
60/429,444,
60/429,709, and
60/429,462

Oct. 1, 2003

The filing date of
application 10/677,104,
of which the Rahdert
publication claims to be
a continuation-in-part

May 14, 2004

The actual filing date
of the Rahdert
publication.

Applicants' non-provisional application was filed on July 1, 2003. Therefore, the only Rahdert priority date that is earlier than applicants' non-provisional filing date is the November 26, 2002 filing date of Rahdert's three provisional applications.

The undersigned attorney has obtained and reviewed copies of Rahdert's three provisional applications. The undersigned attorney does not see in any of these three provisional applications any disclosure of any magnetic devices. All of applicants' claims 1-12, 47-52, and 59 define "a magnetic device", "a magnetic implant structure", or "a prosthetic implant structure comprising ... first and second magnetic devices." Because Rahdert is not entitled to a priority date prior to applicants' non-provisional application filing date for any magnetic disclosure, claims 1-12, 47-52, and 59 cannot be said to be anticipated by Rahdert. These claims should therefore be allowed. (Applicants' provisional applications give applicants an even earlier effective filing date. But it is not necessary to get into that issue because applicants' non-provisional application itself is prior to the date of any magnetic disclosure claimed by Rahdert.)

The foregoing demonstrates that claims 1-12, 47-52, and 59 are allowable. All other claims have either been cancelled or withdrawn. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,



Robert R. Jackson
Registration No. 26,183
Attorney for Applicants
Fish & Neave IP Group
Ropes & Gray LLP
Customer No. 1473
1211 Avenue of the Americas
New York, New York 10036-8704
Tel.: (212) 596-9000
Fax: (212) 596-9090